

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,

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9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 March 23, 2023

16 11:00 AM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Debtor's Motion for Entry of an Order (I)  
2 Authorizing and Approving Certain Bid Protections for the  
3 Proposed Plan Sponsor and (II) Granting Related Relief.  
4 (Doc# 2151, 2151, 2190, 2218, 2224 to 2226, 2229, 2236,  
5 2243, 2256, 2066, 2267, 2277, 2293)

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 CLERK: All right. Judge, it's 11:00. Would you  
3 like to get started?

4 THE COURT: Yes, I would, Deanna. All right.  
5 Who's going to begin for the Debtors?

6 MR. KWASTENIET: Good morning, Judge Glenn. It's  
7 Ross Kwasteniet from Kirkland and Ellis. Can you see me and  
8 hear me okay?

9 THE COURT: Yes, I can.

10 MR. KWASTENIET: Okay, great. Your Honor, the  
11 only item on today's agenda is the Debtors' motion to  
12 approve bid protections which was filed at Docket 2151. We  
13 appreciate Your Honor granting us a short adjournment and  
14 for giving us time on your calendar today. I am pleased to  
15 report that we've used the last few days productively.

16 Last night, we filed an amended proposed form of  
17 order at Docket No. 2301 that reflects an agreement with  
18 NovaWulf to reduce the expense reimbursement cap from \$15  
19 million to \$13 million for savings of \$2 million.

20 Your Honor, we've also resolved the objection of  
21 the ad hoc group of borrowers which was filed at Docket No.  
22 2256. And we resolved that objection by reaching an  
23 agreement on a settlement that will be embodied in the  
24 Debtors' plan of reorganization. The Debtors are going to  
25 work with the ad hoc borrower group over the next few days

1 to memorialize this agreement in a term sheet and plan  
2 support agreement which we will file on the docket as soon  
3 as it's ready.

4 Your Honor, turning to the bid protections motion  
5 for today, we propose to proceed first with the Debtors'  
6 evidentiary presentation and then with argument. So if that  
7 order of events is acceptable to Your Honor, I would yield  
8 the podium to my colleague, Mr. T.J. McCarrick who would  
9 handle the evidentiary portion of the proceeding today.

10 THE COURT: That's fine.

11 MR. KWASTENIET: Thank you, Your Honor.

12 MR. McCARRICK: Good morning, Your Honor. T.J.  
13 McCarrick from Kirkland and Ellis on behalf of the Debtors.  
14 Can you see and hear me?

15 THE COURT: Yes, I can. Go ahead.

16 MR. McCARRICK: Okay. Your Honor, we only have  
17 one witness that we intend to call today. That's Marc  
18 Puntus, the partner and co-head of debt restructuring at  
19 Centerview Partners who's been the Debtors' investment  
20 banker in this case and obviously is intimately involved in  
21 evaluating strategic alternatives for the Debtors' business.

22 What we would propose is having Mr. Puntus,  
23 consistent with prior hearings, adopt his declaration as his  
24 testimony under oath, ask very, very limited direct  
25 questions about developments since the filing of his

1 declaration, and then make Mr. Puntus available for cross  
2 examination if that's acceptable to Your Honor.

3 THE COURT: Let's proceed in that fashion. Go  
4 ahead.

5 MR. McCARRICK: Okay. Mr. Puntus, can you hear  
6 and see me?

7 MR. PUNTUS: Yes, I can.

8 MR. McCARRICK: Okay. Mr. Puntus, do you have a  
9 clean copy of your declaration in support of the proposed  
10 bid protections, which is Docket No. 2152 in front of you?

11 MR. PUNTUS: Yes, I do.

12 MR. McCARRICK: Is there anything you would like  
13 to change about that declaration?

14 MR. PUNTUS: No.

15 MR. McCARRICK: Do you adopt that declaration as  
16 your testimony here today?

17 MR. PUNTUS: Yes, I do.

18 MR. McCARRICK: Mr. Puntus, I just have a few  
19 limited direct examination --

20 THE COURT: Before you do that, Deanna, could you  
21 swear the witness, please?

22 CLERK: All right. Mr. Puntus, if you could raise  
23 your hands? I'm trying to look -- there you are. Okay. Do  
24 you solemnly swear or affirm that the testimony you are  
25 going to give today is the truth?

1 THE WITNESS: Yes, I do.

2 CLERK: Thank you.

3 THE COURT: And I take it, you were asked before  
4 you were sworn, you adopt your declaration as your direct  
5 testimony; is that correct?

6 THE WITNESS: Yes, I do, Your Honor.

7 THE COURT: All right. Go ahead. Go ahead, Mr.  
8 McCarrick.

9 MR. McCARRICK: Thank you, Your Honor.

10 DIRECT EXAMINATION OF MARC PUNTUS

11 BY MR. McCARRICK:

12 Q Since filing your declaration, Mr. Puntus, have there  
13 been any developments related to either of the bid  
14 protections that are at issue in this motion?

15 A Yes. I think I would say there are three developments.  
16 Mr. Kwasteniet just outlined two of them. We've spent an  
17 extensive amount of time with the borrower ad hoc group and  
18 their advisors and we've reached a preliminary resolution of  
19 the borrower's treatment under a Chapter 11 plan and as I  
20 understand it, the borrowers have withdrawn their objection.

21 Secondly, a NovaWulf was a part of these negotiations.  
22 After continuing negotiations with NovaWulf, they have  
23 agreed to reduce the expense reimbursement component of  
24 their bid protections from \$15 million to \$13 million. The  
25 third piece, and this is qualitative, I believe Mr. Pesce or

1 Mr. Colodny at the last hearing referenced an emerging  
2 potential bidder.

3 That emerging potential bidder has accelerated its  
4 efforts, has continued to work with the Debtors and the  
5 Committee, has continued to due diligence, both business and  
6 legal diligence, and its bid has continued to progress. It  
7 is not in final stages, but I would say the NovaWulf  
8 transaction has already served as a stalking horse for this  
9 bid, which adopts some components of the NovaWulf structure  
10 and then comes up with other components that are different.

11 Q Thank, thank you Mr. Puntus.

12 MR. McCARRICK: I will pass the witness and  
13 reserve the right for any redirect.

14 THE COURT: All right. May I ask, who wishes to  
15 cross examine Mr. Puntus? First, let me ask anybody from  
16 the Committee wish to examine Mr. Puntus.

17 MR. PESCE: Gregory Pesce for the Committee. Nok  
18 we pass the witness.

19 THE COURT: All right. Is there anybody who  
20 wishes to cross examine the witness? Please raise your hand  
21 and I will recognize you. Ms. Cornell.

22 MS. CORNELL: Good morning, Your Honor, Shara  
23 Cornell on behalf of the Office of the United States  
24 Trustee.

25 THE COURT: Yes, go ahead, please.



1 MS. CORNELL: Thank you.

2 CROSS EXAMINATION OF MARK PUNTUS

3 BY MS. CORNELL:

4 Q Mr. Puntus, can you explain how the breakup fee and  
5 expense reimbursement valuations were determined,  
6 specifically how the expense reimbursement of now \$13  
7 million and breakup fee of \$5 million were determined?

8 A I'll answer that in a couple of ways. They were  
9 determined after extensive negotiation with NovaWulf. I  
10 think if we circle back to the beginning, NovaWulf's initial  
11 proposal on a breakup fee was \$15 million. We were able to  
12 negotiate it down to \$5 million. Their initial proposal on  
13 when a breakup fee would be paid effectively was in all  
14 circumstances, no matter what happened. We were able to  
15 narrow that considerably through negotiation.

16 At this point, it will only be paid to the extent the  
17 Debtors or the Committee exercise their fiduciary out and  
18 move forward with a higher or better offer. To the extent  
19 we pivot to an orderly winddown as defined in the term  
20 sheets, NovaWulf will not be paid its \$5 million breakup  
21 fee. That's how it was negotiated. As to the expense  
22 reimbursement, similarly, the numbers were considerably  
23 higher. Early on, we negotiated that down to \$15 million  
24 and subsequently to \$13 million -- \$13 million in the  
25 context of what is, is I would (audio drops).

1 Q. Mister --

2 THE COURT: Your sound is gone. I don't hear --

3 THE WITNESS: I'm sorry, I'm sorry. I hit mute.

4 I apologize.

5 THE COURT: Okay.

6 THE WITNESS: I don't know how I did it.

7 THE COURT: You're going to repeat your thought.

8 I don't know where -- what you had said. I can't read lips.

9 THE WITNESS: Where was I?

10 THE COURT: Yeah.

11 THE WITNESS: To the breakup fee.

12 THE COURT: Go ahead. Repeat it. I want to be  
13 sure.

14 BY MS. CORNELL:

15 A So on the breakup fee, initially it was \$15 million  
16 payable in all circumstances, even if we pivoted to an  
17 orderly winddown. We ultimately negotiated it down to \$5  
18 million payable in what we believe are limited circumstances  
19 and those are if they are topped, if we exercise our  
20 fiduciary out to move forward with a higher or better bid.

21 As to the expense reimbursement, the numbers were  
22 considerably higher. We negotiated it down to \$15 million  
23 and now \$13 million. While \$13 million may sound large in  
24 the context of what I believe is one of the most complicated  
25 if not the most complicated complex structured transactions

1 I've ever worked on in my career, we believe \$13 million is  
2 reasonable and fair. NovaWulf, its principals, and its  
3 professionals and their partners, I suspect have already  
4 expended millions of dollars in legal fees getting us to  
5 this point.

6 NovaWulf with the Debtors and the Committee are  
7 effectively the co-architects of what we think is a unique,  
8 novel transaction that hopefully will maximize value for our  
9 customers and create incremental value as the company  
10 emerges from Chapter 11. Tens of thousands of hours have  
11 been expended here in getting to this point. This is not a  
12 simple purchase of an asset or an operating business under  
13 363 of the Bankruptcy Code.

14 Quite the contrary, this deal involves business issues,  
15 legal issues, regulatory issues, crypto issues, structural  
16 issues, tax issues, and probably ten other types of issues  
17 I'm forgetting to mention. We believe NovaWulf has worked  
18 hard, in earnest, in good faith with us, with the Committee.  
19 And at this point, we believe in that context, these fees,  
20 these big protections are fair and reasonable.

21 Q So just to confirm, Mr. Puntus, based on your testimony  
22 today and your previous declaration, is there any  
23 relationship between the dollarization of either the expense  
24 reimbursement or the breakup fee and the purchase price  
25 proposed by NovaWulf?

1 A I would say that the comparables -- I'm quite familiar  
2 with what breakup fees are typically paid in these  
3 situations or straight asset purchases or purchases of  
4 operating businesses, you know, 2 to 4 percent, 3 percent is  
5 sort of the norm. I would say those comparables are inapt  
6 in these circumstances for the reasons I described.

7 To the extent this needs to fit into that framework,  
8 what this transaction is -- and it's been described a couple  
9 of times but I'll try to distill it down. NovaWulf will be  
10 forming a NewCo here, a new company. That new company will  
11 effectively be purchasing all of the assets of Celsius,  
12 netting out the liquid crypto which will be distributed to  
13 Earn customers and other customers on the effective date.

14 The quantum of that consideration, TBD will be in the  
15 disclosure statement but certainly will be a billion-and-a-  
16 half dollars, probably considerably more. That NewCo will  
17 pay \$45 million in cash. There will be incentive structures  
18 for customers, discounts to transact on the NewCo platform.  
19 And as has been discussed, 100 percent of the common equity  
20 will be delivered to our customers, paid to our customers.

21 So if one must fit it into those comparables, this  
22 transaction is at least a billion-and-a-half dollars in  
23 value being paid effectively to our customers. So looking  
24 at it that way, we felt like a \$5 million breakup fee, was  
25 more than, than fair and reasonable hope. Hopefully that

1 answers your question.

2 Q That's all that I have today. Thank you, Mr. Puntus.

3 THE COURT: All right, does any --

4 THE WITNESS: Thank you.

5 THE COURT: Thank you very much, Ms. Cornell.

6 Does anyone wish to cross examine?

7 MR. LEBLANC: Your Honor, it's Andrew Leblanc of  
8 Milbank on behalf of the Series B Preferred Holders. In  
9 light of that last answer, I do have some questions.

10 THE COURT: Go ahead, Mr. Leblanc.

11 CROSS EXAMINATION OF MARC PUNTUS

12 BY MR. LEBLANC:

13 Q Mr. Puntus, you just, in answer to Ms. Cornell's last  
14 question, you referred to the quantum of assets that are  
15 being acquired for \$45 million as part of the consideration  
16 or the calculation of the breakup fee here; is that what I  
17 understood?

18 A So my -- just to be clear, my first and principle  
19 answer is that this is a large, complex transaction  
20 involving a billion-and-a-half to \$2 billion in value where  
21 NovaWulf was the principal architect. In that context, we  
22 believe a \$5 million breakup fee is fair and reasonable,  
23 particularly inasmuch as it only is paid in very limited  
24 circumstances.

25 What I said, Mr. Leblanc, if one must fit it into the

1 comps, if you look at the structure and the legal structure  
2 of this transaction, there will be a NewCo paying 100  
3 percent of its equity to customers plus the cash  
4 consideration plus some other components. In that context,  
5 the 3 percent breakup fee test is certainly met from my  
6 perspective.

7 Q You've never in your career calculated the 3 percent  
8 breakup fee by determining what amount of assets were being  
9 acquired as opposed to what was being paid by a purchaser;  
10 is that right?

11 A I think I've calculated a 3 percent breakup fee in a  
12 variety of ways. It includes sometimes liabilities that one  
13 might not include in a typical M&A transaction. It  
14 sometimes does include consideration that is ultimately  
15 going back to creditors under a Chapter 11 plan or  
16 otherwise.

17 So I would say there's not one straight way, but again,  
18 I'll just say it again, that is not my principal defense of  
19 this breakup fee. My principal defense is \$5 million in the  
20 context of this large, complex, bespoke transaction which  
21 NovaWulf has principally architected is fair and reasonable.

22 Q Okay. And you didn't present in your declaration any  
23 comparable transactions in which you calculated a breakup  
24 fee by reference to the quantum of assets that are being  
25 acquired by the purchaser, correct?

1 A There's no comparables in in the declaration.

2 Q Now -- and just to confirm and I don't think there's  
3 any lack of clarity in what the Debtors have presented, but  
4 since you've said it a few times, if the Court were to  
5 determine that the Series B Preferred Equity Holders, for  
6 example, were entitled to some value out of the estate, then  
7 the plan as it's currently contemplated cannot be confirmed;  
8 isn't that right?

9 A The current plan which we intend to file provides for  
10 no recovery for the Series Being Preferred, as I understand  
11 it.

12 MR. LEBLANC: No further questions, Your Honor.

13 THE COURT: Thank you very much, Mr. Leblanc.

14 Anybody else wish to cross examine?

15 All right, I have questions for you, Mr. Puntus.  
16 How much capital is NovaWulf putting at risk under the plan  
17 sponsor agreement?

18 THE WITNESS: The direct consideration, cash  
19 consideration to be paid, Your Honor, is \$45 million in  
20 capital, plus the expenses they are incurring as part of  
21 this transaction.

22 THE COURT: What if any compensation would  
23 NovaWulf be entitled to if the plan fails and the Debtor is  
24 forced to have an organized liquidation -- let me stop  
25 there.

1 THE WITNESS: Under the plan term sheet, if we  
2 pivot to an orderly winddown, which I believe is a defined  
3 term, the breakup fee would not be paid. Their expense  
4 reimbursement component would be paid. Obviously,  
5 reasonable documented expenses to be vetted by the Debtors  
6 and the Committee would be compensated.

7 THE COURT: So if a Chapter 7 Trustee is appointed  
8 and the Debtor is liquidated -- so I presume that a Chapter  
9 7 Trustee would want to retain an asset manager to conduct  
10 an orderly liquidation.

11 What if any compensation would NovaWulf be  
12 entitled to if the case is converted to a Chapter 7 and  
13 let's say it proceeds to an orderly liquidation under  
14 Section 721 of the Bankruptcy Code, the Trustee can be  
15 authorized to operate the business for a period and I  
16 presume that it would take time to have an orderly  
17 liquidation of the assets. But if it's converted to a  
18 Chapter 7, what if any compensation would NovaWulf be  
19 entitled to receive under the plan sponsor agreement?

20 THE WITNESS: I believe, Your Honor, under the  
21 contractual terms of the bid protections, they would be  
22 entitled to their expense reimbursement. To the extent the  
23 Trustee determined to employ NovaWulf --

24 THE COURT: Well, I'm -- let's assume it employs  
25 somebody else.



1 THE WITNESS: Then all they would be entitled to,  
2 Your Honor, is their expense reimbursement up to the \$13  
3 million cap.

4 THE COURT: So that wasn't clear to me. I may  
5 have missed something in reading through the agreements. I  
6 understood that if the Debtor conducts an orderly  
7 liquidation, it appeared that NovaWulf would be entitled to  
8 expense reimbursement, but I didn't see it stated clearly  
9 that if the case is converted to a Chapter 7, that they  
10 would be entitled to compensation. Where do I find that?

11 THE WITNESS: I'm not sure, Your Honor. It's --  
12 you're now unfortunately above my pay grade in the document,  
13 so I would defer to Mr. Kwasteniet or someone at Kirkland to  
14 point to the provisions that -- and I may have misstated it  
15 in the context of a Chapter 7. I was really focused on an  
16 orderly winddown under Chapter 11.

17 THE COURT: Right. So in a Chapter 7, the Trustee  
18 is entitled -- have you been involved in any Chapter 7's  
19 before?

20 THE WITNESS: I try not to be, Your Honor.

21 THE COURT: I'm sure you -- I'm sure you try not  
22 to be.

23 THE WITNESS: I can't think of any I've been  
24 involved in though.

25 THE COURT: So ordinarily, the Trustee is

1 compensated with a commission and so -- I'll turn to counsel  
2 to ask about this, because it really is not clear to me  
3 under the documentation about what if any compensation  
4 NovaWulf would be entitled to receive if the case is  
5 converted to a Chapter 7. Okay. So tell me, is NovaWulf  
6 entitled to any compensation if the plan fails because  
7 NovaWulf is determined not to be regulatory compliant?

8 THE WITNESS: Yeah, I believe in those  
9 circumstances, Your Honor, the plan fail circumstance and we  
10 need to pivot to an orderly winddown, NovaWulf would not  
11 receive its breakup fee but would receive its expense  
12 reimbursement up to the cap.

13 THE COURT: So if it was determined that NovaWulf  
14 is not regulatory compliant, why should it receive expense  
15 reimbursement when it's its own short shortcomings that have  
16 resulted in that aspect failing?

17 THE WITNESS: I think what we concluded it -- that  
18 it wouldn't be NovaWulf, per se, who wouldn't be  
19 regulatorily compliant. It would be the plan itself for one  
20 of several reasons. We felt like the plan might fail for a  
21 bunch of different reasons. We're hopeful it won't. We  
22 jumped over a lot of hurdles to get to the point where we  
23 think we're in very good shape to have this plan confirmed.  
24 But our focus was not on NovaWulf itself not being  
25 regulatorily compliant.

1 THE COURT: But what if anything was done by the  
2 Debtor or its professionals to -- well, let me ask you.  
3 Have you and the other -- and the legal and other advisers  
4 reached a conclusion as to whether Nova can be regulatory  
5 compliant?

6 THE WITNESS: Yes, I believe we believe the deal,  
7 the structure of the plan, and NovaWulf will be regulatorily  
8 compliant.

9 THE COURT: And --

10 THE WITNESS: And its partners. I'm sorry, Your  
11 Honor.

12 THE COURT: And where do I look to see that? Is  
13 there an opinion of counsel that's been given either by  
14 NovaWulf counsel or by the Debtors' counsel or anyone else  
15 as to the issue of whether NovaWulf may become regulatorily  
16 compliant?

17 THE WITNESS: I believe we intend to demonstrate  
18 that, Your Honor, at the disclosure statement and  
19 subsequently at the plan confirmation hearing.

20 THE COURT: Well, but I'm being asked now to  
21 approve expense, you know, breakup fee and expense  
22 reimbursement and disclosure statement hearing will happen  
23 later. And if at that time, it's determined that that  
24 NovaWulf is not regulatory compliant, why should they be  
25 receiving expense reimbursement if they're failing that

1 that's led to the disapproval? This is an issue that's of  
2 concern to me. It's the sequence of events.

3 I'm being asked today to approve a breakup fee and  
4 expense reimbursement before there's been any determination  
5 whether NovaWulf is or can become regulatory compliant. And  
6 if that's the reason for the failure of this structure, I  
7 don't see -- it's a question why they should be compensated.  
8 I am I correct that I'm being asked today to approve a  
9 structure that will -- Mr. Kwasteniet, I'm not to you yet.  
10 Okay? Let's go back on the screen to the witness.

11 I'm being asked today to approve something that  
12 will result in NovaWulf at a minimum being entitled to  
13 substantial amount of expense reimbursement before there's  
14 been any determination whether it in fact may become  
15 regulatory compliant. Isn't that what I'm being asked?

16 THE WITNESS: Yes, Your Honor. I would say both  
17 the Debtors, their professionals, their lawyers, the  
18 Committee, their professionals, their lawyers have spent an  
19 extensive amount of time vetting NovaWulf, understanding the  
20 business they intend to run in NewCo, understanding the  
21 legal and regulatory hurdles here, and I believe -- I won't  
22 speak for Committee counsel or Debtor counsel, but I believe  
23 both parties believe that NovaWulf will be deemed to be  
24 regulatorily compliant as we move forward in this process.

25 THE COURT: My next question is -- I don't want

1 you to tell me the amount at this point, but have you  
2 determined the -- what income stream NovaWulf would receive  
3 if the plan is confirmed?

4 THE WITNESS: Yes, that is one component of -- an  
5 important component of NovaWulf's transaction. They will be  
6 paid an incentive fee structure to effectively manage the  
7 NewCo, the illiquid assets, and build a continuing business.  
8 Those provisions, those economics have been carefully  
9 negotiated with the Debtors and the Committee. I don't know  
10 whether they've been discussed publicly, but I'm happy to  
11 give a high level of those if Your Honor would like.

12 THE COURT: Before we do that, how does the \$45  
13 million advance payment by NovaWulf fit into this  
14 calculation? What I -- I guess bottom line, I'm trying to  
15 understand, have there been estimated the net present value  
16 of the future income stream which NovaWulf would be expected  
17 to receive? I understand there's no precise dollar. It's  
18 probably a range, high, low, midpoint. Has that been  
19 determined? Have you, on behalf of the Debtors, made that,  
20 those calculations?

21 THE WITNESS: We have not as of yet, Your Honor,  
22 but I can give you a sense. The NovaWulf fee, management  
23 incentive fee structure will be paid based upon the net  
24 asset value at emergence. As Your Honor knows, the net  
25 asset value of these assets moves every day.

1 THE COURT: There's a lot of illiquid assets in  
2 this pile -- pool. I don't know now the value of the  
3 illiquid assets is to be -- one of the --

4 THE WITNESS: Well --

5 THE COURT: -- reasons for the structure is to  
6 have over time hopefully the illiquid assets can be  
7 liquidated at, you know, and maximize the value.

8 THE WITNESS: So Your Honor, the way the structure  
9 works is day one it's based upon NAV. All of those NAVs  
10 will be included and estimated in the disclosure statement.  
11 The initial fee is 1.95 percent of NAV as of, I think, two  
12 weeks ago -- and again, we haven't finalized all of the NAV  
13 analysis of the illiquid assets -- but I believe that first  
14 year fee would have been approximately \$30 or \$35 million.

15 To your second point, over time, that fee migrates  
16 from a fee based on NAV, net asset value, to a fee based  
17 upon equity, the ESTs that will be delivered to the Earn  
18 customers. So the trading value of, of those ESTs. So by  
19 year three, the fee is tied exclusively to the equity as  
20 opposed to the NAV, to account for the fact that the NAV may  
21 be lower than the equity and to incentivize NovaWulf to  
22 maximize the value of the equity for Earn customers.

23 And I guess to further -- to put a bow on it, over  
24 time as assets grow and value grows, the quantum of the fee  
25 ratchets down based upon the size of the asset base and the

1 equity account.

2 THE COURT: Who is it that will be responsible for  
3 judging the performance of NovaWulf if the plan is confirmed  
4 and NewCo is established?

5 THE WITNESS: So NovaWulf will be a public  
6 company. Its equity will be reflected in a token which will  
7 be a security and will file Q's and K's. The board will be  
8 controlled by customer-appointed representatives who will  
9 oversee the activities and business decisions of NovaWulf.

10 THE COURT: So if the board decides to terminate  
11 NovaWulf for poor performance and it's replaced by another  
12 asset manager, what if any compensation would NovaWulf be  
13 entitled to claim?

14 THE WITNESS: There are extensively negotiated  
15 provisions in the documents, Your Honor, which lay out the  
16 facts and circumstances under which the board could  
17 terminate NovaWulf, but they can be terminated after a  
18 certain period of time and once terminated, they can be  
19 replaced and would receive no further management incentive  
20 fees.

21 THE COURT: Would they, would NovaWulf -- let's  
22 assume that six months, nine months after the plan's  
23 confirmed and it begins operating, the board decides to  
24 terminate NovaWulf because what it believes is poor  
25 performance. Would NovaWulf have any claim for the expense

1 -- and the board goes ahead and retains another asset  
2 manager. Under those circumstances, would NovaWulf have a  
3 claim for a breakup fee or expense reimbursement?

4 THE WITNESS: Well, at that point, Your Honor, the  
5 breakup fee would not have been earned because the plan  
6 would have been confirmed and the expenses would already  
7 have been compensated. I believe NovaWulf is protected and  
8 I don't have all the terms --

9 THE COURT: How is the expenses compensated at  
10 that point? There's no -- expense, as I understand the  
11 expense reimbursement is if someone comes in and bids higher  
12 this goes forward with some other deal structure or a  
13 different asset manager. So I'm really focusing on the  
14 plan's confirmed. NovaWulf is operating this business. The  
15 board decides after six months that it's doing a terrible  
16 job and it terminates them and replaces them, and my focus  
17 is what if any compensation is NovaWulf entitled to under  
18 those circumstances, under the agreements that have been  
19 negotiated?

20 THE WITNESS: So I believe that NovaWulf is  
21 protected for a period longer than six months. I don't have  
22 the exact term in there, but not surprisingly they have  
23 negotiated -- we have negotiated provisions that protect  
24 them for a certain period of time, after which -- and I  
25 don't know the time, Your Honor -- after which if they are



1 terminated and replaced, they would receive no further  
2 incentive compensation.

3 THE COURT: Is -- under this structure, is no  
4 NovaWulf compensated for any clawback recoveries?

5 THE WITNESS: No. The clawback recoveries and all  
6 other litigation claims will reside outside of NovaWulf.  
7 They will be in a litigation trust structure and prosecuted  
8 separately for the benefit of customers.

9 THE COURT: All right. And let's assume for  
10 hypothetically that settlement or judgment of avoidance  
11 actions results in recovery of cryptocurrency. Is there  
12 anything in the agreements about how those -- that crypto  
13 would be managed and disposed of?

14 THE WITNESS: The crypto or anything else  
15 recovered by the litigation trust will not be part of the  
16 NovaWulf structure, Your Honor. It may be the case because  
17 NovaWulf will have linkage to our creditors and customers,  
18 that NovaWulf serves as a distribution agent prospectively  
19 to deliver that crypto back to customers' wallets. They  
20 will be doing that with respect to the liquid crypto  
21 distributed under the plan, but that quantum of crypto will  
22 not be part of the economic -- not be part of NovaWulf nor  
23 will it be part of their incentive compensation structure.

24 THE COURT: Okay. I think the other questions  
25 that I have will be for the lawyers, but in terms of the

1 cross examination of Mr. Puntus, Ms. Gallagher, if you wish  
2 to ask any questions of the witness, you need to unmute.

3 MS. GALLAGHER: Oh, sorry. I don't have any  
4 questions at the moment.

5 THE COURT: Thank you, Ms. Gallagher. Mr. Currie,  
6 do you wish to cross examine?

7 MR. CURRIE: Good morning, Your Honor. Andrew  
8 Currie of Venable. Nice to see you. Can you see me and  
9 hear me?

10 THE COURT: I can. And you're representing whom?

11 MR. CURRIE: We represent Ignat Tuganov. I just  
12 have one question for Mr. Puntus.

13 THE COURT: Just before you begin, Mr. Tuganov has  
14 appeared before pro se and he's also, I think Venable has  
15 just recently filed an adversary proceeding on his behalf.  
16 There's been no -- I don't know whether it's been served. I  
17 just -- I'm just noting that for the record. Go ahead, Mr.  
18 Currie.

19 MR. CURRIE: And Your Honor, Mr. Tuganov's been  
20 represented by Venable since --

21 THE COURT: Okay.

22 MR. CURRIE: -- the initial filing of the  
23 bankruptcy case.

24 THE COURT: That's fine.

25 MR. CURRIE: He's always had counsel. My partner

1 Mr. Sabin was not able to appear today but --

2 THE COURT: That's fine. Go ahead.

3 CROSS EXAMINATION OF MARC PUNTUS

4 BY MR. CURRIE:

5 Q So Mr. Puntus, there was some mention of another bidder  
6 and that you were sort of hopeful or perhaps, you know,  
7 moving towards that other bidder and timing of that. Could  
8 you elaborate for the Court where that stands in more  
9 detail, please?

10 A We -- there is another bidder. I think Mr. Pesce or  
11 Mr. Colodny alluded to that bidder in a prior hearing. Our  
12 negotiations and discussions with that bidder have  
13 accelerated. The bid is still a long way from being  
14 finalized or in a form that is confirmable or presentable to  
15 the Court, but we continue to work with that one bidder and  
16 we will see, between the Debtors and the Committee, whether  
17 we can create a definitive higher or better transaction for  
18 the benefit of customers.

19 Q In terms of sequencing, I understand that there's been  
20 a reduction of the expense reimbursement, which is good,  
21 obviously, but in terms of sequencing, if you've already  
22 achieved a catalyst, if you will, with respect to another  
23 interested bidder, would the estate be better off if you  
24 were able to sort of not have these be approved and sort of  
25 work forward with the other potential bidder and have a two-

1 horse race without all of these protections?

2 A No. No, in my opinion, absolutely not. That other bid  
3 is still quite a ways away from being higher or bidder  
4 (sic). It still has hurdles and obstacles that we need to  
5 address, so no. NovaWulf has been working now for two  
6 months, three months to get us to this point where we have a  
7 binding term sheet, a binding plan support agreement.

8 We believe we have jumped over many of the hurdles we  
9 need to jump over to get a confirmable plan. So absolutely  
10 not. If we don't move forward today and NovaWulf determines  
11 not to move forward, we will maybe not be back to square  
12 one, but we will be in a much, much more challenged place.  
13 So no.

14 Q In terms of the NewCo structure that you mentioned, is  
15 there some Bankruptcy Code provision that would allow you to  
16 short circuit the IPO process for a public company? Is  
17 there some thinking about how long that's going to take, the  
18 delay, to sort of establish a NewCo that will allow for the  
19 equity tokens to trade?

20 A Well, we -- I'm sorry, I apologize for interrupting.

21 Q No, that's my question.

22 A We believe that the equity will be issued under 1145 of  
23 the Bankruptcy Code. We believe the company will  
24 immediately be a public company filing Q's and K's.  
25 NovaWulf has retained a partner under which -- a partner who

1 will facilitate the trading of the equity. As I said, the  
2 equity will be tokenized, a security. So we believe that  
3 will happen immediately upon the effective date of a Chapter  
4 11 plan.

5 Q Are you familiar with the plan that's currently on  
6 appeal with respect to Voyager, Mr. Puntus?

7 A I'm not involved in that case other than reading the  
8 bankruptcy rags. No.

9 Q Are you aware that there was a dispute raised about  
10 whether the tokens that you're talking about issuing would  
11 be considered unregistered securities?

12 THE COURT: I don't think that was -- I'm sorry,  
13 I'm going to stop you there. I don't -- that is a legal  
14 question. My understanding is that the tokens, the issue  
15 was the tokens that Voyager had issued not as part of the  
16 plan were securities that had to be registered. I didn't  
17 understand. I read the transcript from Judge Wiles. I'm  
18 going to -- it's calling for a legal question. You're not  
19 asking this witness that question. I'm sustaining an  
20 objection, my own objection to it. Ask your next question.

21 MR. CURRIE: Thank you, Your Honor.

22 BY MR. CURRIE:

23 Q And so if you could elaborate on 1145, Mr. Puntus, in  
24 terms of the timing; you think that will be upon emergence  
25 from confirmation, you'll have a public co structure with

1 the NewCo that 1145 would sort of bleed over to your NewCo  
2 structure? I guess I wasn't following the --

3 A Yeah, I don't understand the question, but I'll try to  
4 answer it in a nonlegal fashion. We are trying to address  
5 some of the issues that have been raised perhaps in Voyager  
6 and elsewhere. What we are issuing to creditors is no  
7 different than common equity. That is what we are issuing.  
8 It will be in tokenized form, but NewCo will be a public  
9 company registered and reporting, filing Q's and K's, with a  
10 board controlled by its customers.

11 So we are trying to address the issue as to whether a  
12 token is security. This is not CEL token. This is not a  
13 token native to some of the other exchange platforms. This  
14 is 100 percent of the common equity of NewCo. It just will  
15 be reflected in tokenized form. Hopefully, that answers the  
16 question.

17 Q And as I mentioned, we represent Mr. Tuganov, who's one  
18 of -- a large holder in the Earn category. Can you explain  
19 for the Court, you know, just broad strokes, you know, what  
20 you expect an Earn customer to receive under the --  
21 ultimately, if the plan is going to be confirmed?

22 A I think we will be providing extensive detail in the  
23 plan and disclosure statement we intend to file in a matter  
24 of weeks, but in terms of consideration --

25 THE COURT: I think it was due by the end of the

1 month, but --

2 THE WITNESS: In a week. I'm sorry, Your Honor.

3 THE COURT: It's not weeks.

4 THE WITNESS: That's one week. I apologize, Your  
5 Honor. Time goes slowly in this case.

6 BY MR. CURRIE:

7 A There will be two -- for Earn creditors, there will be  
8 two components of consideration as has already been  
9 discussed. One will be a liquid crypto distribution, a  
10 strip of liquid crypto, probably BTC, ETH, and U.S. -- and  
11 stables. And the second will be a pro rata share of 100  
12 percent of the equity of NewCo. As we've discussed, NewCo  
13 will house most if not all of the illiquid assets of the  
14 Celsius estate.

15 Q And as we're sort of comparing that to what might be an  
16 orderly liquidation, is there thinking about sort of rough  
17 numbers, broad strokes, what people would receive in the  
18 Earn category? I mean, they're the ones so far that are --  
19 appear to be -- there's lack of clarity about what they're  
20 getting in comparison to, you know, other creditors and the  
21 liquidation context.

22 A All of that will be included in the disclosure  
23 statement. There will be a liquidation analysis which  
24 allows us to satisfy best interests. There will be a  
25 comparison of that to the value being distributed under the

1 NovaWulf NewCo plan. There will be a discussion of what  
2 each class of customers will receive, convenience class,  
3 Earn customers, borrowers, custody, all of that and more  
4 will be in the disclosure statement. This will be one of  
5 the most comprehensive disclosure statements I think I've  
6 ever seen in my experience.

7 MR. CURRIE: I have no further questions, Your  
8 Honor.

9 THE COURT: Thank you. Mr. Dixon.

10 MR. DIXON: Hello, sorry. Just unmuting myself.  
11 Simon Dixon, pro se creditor. I'm the seventh largest  
12 creditor in this case.

13 CROSS EXAMINATION OF MARC PUNTUS

14 BY MR. DIXON:

15 Q The first question I had is with regards to staked ETH.  
16 I think it's being defined as an illiquid asset at the  
17 moment, but on the 12th of April ETH becomes -- staked ETH  
18 becomes a liquid asset. Is it going to be defined as  
19 illiquid or liquid for the purpose of the plan?

20 A The staked ETH, the stETH, is part of NovaWulf  
21 structure and will be ported over to the NewCo under the  
22 plan.

23 Q Okay. I mean, I think there will be quite a lot of  
24 objections from creditors because they like to receive as  
25 much of their ETH back as possible.



1 THE COURT: This is not the plan -- this is not a  
2 disclosure statement plan hearing. This is a hearing on  
3 whether or not the Court should approve the bid protection.  
4 So limit your questions to that.

5 MR. DIXON: Okay, so it's not the plan hearing.

6 THE COURT: This is not the plan hearing. There  
7 has not been a disclosure statement or proposed plan that's  
8 been publicly released at this point. So this is -- the  
9 issue today is with respect to the motion to approve bid  
10 protections for NovaWulf.

11 MR. DIXON: Okay, so I'll leave it for a future  
12 hearing. But for the record, I did want to say, I think  
13 they said that NovaWulf came up with a plan, but it was a  
14 plan that was proposed by myself and Bank to the Future in  
15 terms of the structure. But I'll save the rest of my  
16 questions for when we can actually ask on the actual plan.  
17 Thank you.

18 THE COURT: Thank you, Mr. Dixon. Mr. Abreu?

19 MR. ABREU: Chairman?

20 THE COURT: Yes, go ahead. You have to unmute --  
21 yeah, go ahead.

22 MR. ABREU: Yeah. I wish to speak after this as  
23 well about this motion, but I want to put some questions  
24 towards Mr. Puntus about the NovaWulf plan.

25 CROSS EXAMINATION OF MARC PUNTUS

1 BY MR. ABREU:

2 Q The Ethereum that going to be staked, is that part of  
3 the performance fee? Will that be -- will they take a  
4 performance fee from that stake ETH?

5 A Yes. All of the assets that will be part of the NewCo  
6 structure will be included in the performance fee, save the  
7 loan portfolio.

8 Q So the loan portfolio, the restructuring will not be  
9 included also in the performance fee?

10 A There won't be a double counting. There -- we won't be  
11 counting the coin that ultimately is an obligation to the  
12 lenders as restructured and the loans. Only the coin itself  
13 including the staked ETH.

14 Q So the interest paid on the restructuring of the loans  
15 will be not -- will not be included in the performance, fee?

16 A The interest paid on the loans will ultimately become  
17 part of the NewCo and ultimately will factor into the  
18 performance fee.

19 Q Okay. About the current custodian that you are using,  
20 Fireblocks, do you think they have the legal requirements to  
21 stake Ethereum and hold your assets?

22 MR. McCARRICK: Your Honor, I'm going to object.

23 THE WITNESS: I didn't understand the question. I  
24 apologize.

25 BY MR. ABREU:

1 Q Currently, you have your assets in Fireblocks and you  
2 have the crypto assets, right? \

3 A I believe that that's correct.

4 Q So, is it -- in your view, there is a legal structure  
5 there to be saving or guarding your current crypto assets on  
6 that company?

7 THE COURT: I'm sorry. I don't understand the  
8 question. Mr. Puntus, did you understand the question?

9 THE WITNESS: I didn't understand the question and  
10 even I think, Your Honor, to the extent --

11 MR. ABREU: Hello, okay, I'm going to --

12 THE WITNESS: I may not be the right person to  
13 answer the question.

14 MR. ABREU: I'm going to give greater context.  
15 Sorry, Judge. Currently --

16 THE COURT: No, I don't want -- no context. You  
17 have questions of the witness, ask the witness questions. I  
18 don't want to hear argument from you at this --

19 MR. ABREU: Okay, okay.

20 BY MR. ABREU:

21 Q Currently you have assets on Fireblocks. You think  
22 that's fine? Legally, that's fine, right? I just want to  
23 know that.

24 A I don't -- I can't answer a legal question. I believe  
25 the assets we current -- we currently do have assets on

1 Fireblocks.

2 Q Yeah, and I believe it's being staked by them, correct?

3 A I don't know the answer to that.

4 Q Okay.

5 MR. ABREU: Okay, that's all my questions.

6 THE COURT: All right. Mr. Ivene.

7 MR. IVENE: Good afternoon. It's Jason Ivene, pro  
8 se creditor.

9 CROSS EXAMINATION OF MARC MR. PUNTUS

10 BY MR. IVENE:

11 Q Mr. Puntus -- I'm sorry, if I mess up your name -- does  
12 -- okay, within the plan so far what we've been presented, a  
13 CEL token is going to be subverted town to 20 cents. In --  
14 is there any issue if it deemed to be the value of date of  
15 petition with this order? If it goes up, does it change  
16 anything?

17 A I think that --

18 THE COURT: I don't expect you to answer legal  
19 questions, Mr. Puntus --

20 MR. IVENE: Okay.

21 THE COURT: -- factual questions, you go ahead and  
22 do that, but -- are you able to respond?

23 THE WITNESS: I would say on CEL token, I think  
24 that issue is among a thousand other issues continues to be  
25 negotiated as to what value will -- what claim CEL token

1 holders will have, whether it's the 20 cents or so it traded  
2 at, at or about the petition date or some other value.  
3 That's an issue, I believe, that continues to be discussed  
4 and ultimately will be reflected in the plan we file in a  
5 week.

6 THE COURT: All right --

7 MR. IVENE: That's all I have. Thank you.

8 THE COURT: Mr. Porter? Mr. Porter, if you want  
9 to be heard, you need to unmute. Mr. Porter, your hand is  
10 raised, but you're still showing on mute. Okay, go ahead.

11 MR. PORTER: Apologize.

12 THE COURT: Go ahead.

13 MR. PORTER: Good afternoon, Judge. Judge Glenn,  
14 the problem we have before us now is cryptocurrency's rise  
15 in price versus the Chapter 11 petition dates value of the  
16 accounts. Depositors are curious where the extra monies  
17 will go over the value of the Chapter 11 petition date. In  
18 the event we are experiencing significantly higher prices  
19 than our deposits in the cryptocurrency's --

20 THE COURT: Mr. Porter, since the petition date as  
21 of yesterday, Bitcoin had increased 3.9 percent. I happened  
22 to look at that yesterday. I don't know what's happened  
23 with the other crypto, so some things have gone up. Some  
24 things have gone down.

25 MR. PORTER: I was referring specifically to the

1 top tier. As of January 1st, Bitcoin was 16,600 and change  
2 and today it's around 28,000 and it could be significantly  
3 higher, 40,000, who knows.

4 THE COURT: How it will get distributed is a plan  
5 issue and not the issue about approving the fees for  
6 NovaWulf, if it's approved. That's going to be plan issue.

7 MR. PORTER: Your Honor --

8 THE COURT: If you have --

9 MR. PORTER: No, Your Honor --

10 THE COURT: I'm sorry. No. listen to me. If you  
11 want to ask -- you need to ask questions with respect to the  
12 issues about approving the breakup fee and expense  
13 reimbursement. That's the issue for today. You and  
14 everyone else will have an opportunity to address any  
15 issues, the disclosure statement or plan confirmation. Do  
16 you have questions regarding expense reimbursement and  
17 breakup fees?

18 MR. PORTER: Yes. I disagree with the amount --

19 THE COURT: I don't care whether you disagree with  
20 me or not. Do you have any questions for this witness about  
21 breakup fees and expense reimbursement? Otherwise I'm going  
22 to cut you off.

23 MR. PORTER: I'll wait until another time that's  
24 more appropriate. I apologize, Your Honor.

25 THE COURT: Mr. Herrmann, go ahead.

1 MR. HERRMANN: Thank you, Your Honor. Immanuel  
2 Herrmann, pro se creditor.

3 CROSS EXAMINATION OF MARC PUNTUS

4 BY MR. HERRMANN:

5 Q Mr. Puntus, in my view, we need to release all of the  
6 Ethereum. If creditors were to argue to release all of the  
7 Ethereum rather than NewCo holding onto it, would these bid  
8 protections and the breakup fee still makes sense as  
9 proposed?

10 A I don't completely understand the question. The  
11 current structure provides for, the NovaWulf deal provides  
12 for the staked ETH and the stETH to be ported to the NewCo  
13 structure and the value of that staked ETH and stETH and the  
14 other assets, the mining business, the loan portfolio, the  
15 alternative investments, to be reflected in the ESTs, the  
16 common equity to be issued by NewCo to 100 percent of the  
17 Earn creditors.

18 Q I under --

19 A That's the current deal that we've negotiated with  
20 NovaWulf.

21 Q I understand that's the current deal and any changes  
22 will come under the context of a plan, but would the bid  
23 protections or breakup fees need to change in a scenario  
24 where all the Ethereum would be released? In other words,  
25 creditors will -- this is a big issue for creditors. We

1 want the Ethereum released and my question is specifically  
2 about the bid protections and the breakup fee. If the plan  
3 had to change that way or creditors insisted on it, would  
4 this plan you have to pay these, you know, to have these bid  
5 protections and have this breakup fee, would it still be  
6 able to survive as it is?

7 A We'd have to negotiate that with NovaWulf. The current  
8 deal with NovaWulf is this plan, this purchase, these  
9 assets, and these bid protections. To the extent something  
10 changes and a portion of these assets are distributed  
11 directly to Earn creditors, as the deal stands today, it  
12 wouldn't exist. Would we go back to NovaWulf and try to  
13 renegotiate it? Sure. But as it stands today, we are  
14 seeking approval of these breakup fees, these expense  
15 reimbursements for this transaction. Hopefully, that  
16 answers your question.

17 Q Yeah, I think it does, although you know, I asked  
18 because before we --

19 THE COURT: Let's not argue. Ask your questions,  
20 Mr. Herrmann.

21 MR. HERRMANN: Sure. Sorry, Your Honor.

22 BY MR. HERRMANN:

23 Q Yeah, I just want to make sure there's an outline of a  
24 plan creditors can stand behind. Do you think it would make  
25 sense to have a rough disclosure statement, super rough, or



1 something that includes the liquid crypto amounts, what's  
2 going to happen to the ETH, the amount of liquid crypto  
3 going back to Earn before we approve these bid protections  
4 and the breakup fee? So similar -- the order of operations  
5 questions that had been asked by -- earlier by one of the  
6 attorneys.

7 A No, we don't have time here. We have to move forward  
8 quickly. We can't wait until we resolve every single issue.  
9 I think we've resolved a lot of them. We will have a  
10 disclosure statement that's not rough but detailed hopefully  
11 in a very short period of time and we can then proceed to a  
12 disclosure statement hearing and a plan confirmation hearing  
13 where all of these issues can be raised and addressed.  
14 We're simply out of time.

15 NovaWulf has expended an extensive amount of dollars  
16 and time and resources to get us to this point and we just  
17 can't afford to wait. And my fear would be at some point,  
18 this carefully crafted transaction simply falls apart and I  
19 also believe, as I've said, \$5 million, and again, they  
20 don't get it unless there's a higher or better bid.  
21 If we pivot to something that looks like an orderly  
22 winddown, they don't get the \$5 million and the expense  
23 reimbursement are reasonable prices to pay.

24 I know it's a lot of money, but in the circumstances,  
25 in a complex case, we believe we should move forward and get

1       these approved today and keep this sort of train running  
2       towards the towards the finish line.

3       Q     All right. Mr. Puntus, could you let us know what you  
4       understand the estimated liquid crypto recovery to be for  
5       Earn under these bid protections and breakup fee, like what  
6       you're relying on? Because my understanding now after  
7       you're answering these questions is that if the deal changes  
8       a lot, then the breakup fee and the bid protections may need  
9       to change. So like roughly what is the plan for how much  
10      liquid --

11      A     I --

12      Q     -- crypto would go out to Earn versus how much would go  
13      into this?

14      A     Yeah, I think we're -- I'm not going to answer that.  
15      We're not going to include roughly. We will include  
16      detailed analysis in the disclosure statement when we file  
17      it.

18      Q     All right. And could you -- okay, so I have -- my  
19      other question was similar, so I'm not going to ask. Yeah.  
20      And I think you've already answered, but just to clarify  
21      again, a big issue for creditors, price appreciation of  
22      coins, post-petition. Anything held on the balance sheet,  
23      let's say that the price of Ethereum goes up from, you know,  
24      to \$20,000 per coin so 10X. You'd be taking a 20 percent  
25      management fee; is that correct, like on the U.S. dollar

1 price appreciation?

2 So like, if Ethereum, just irrespective of the  
3 management, right, you'd be taking performance fees just,  
4 you know, because the U.S. dollar price of the Ethereum on  
5 the balance sheet goes up. NovaWulf would, sorry, not you.

6 A Yes.

7 Q Yeah.

8 A The management fee, as I said, will initially be tied  
9 to NAV, net asset value, and to the extent values of the  
10 crypto, the illiquid crypto go up, then the -- go up and the  
11 fee would go up. That's correct.

12 Q All right. And are you aware that most crypto stocks  
13 illiquid crypto vehicles such as the BitWise, the Grayscale,  
14 Ethereum, and Bitcoin Trusts and other sorts of vehicles  
15 that are a security that contains crypto tend to trade  
16 significantly below net asset value. For example, 50  
17 percent is typical, a 50 percent discount to net asset  
18 value.

19 A I can't speak to the universal crypto stocks. I'm  
20 aware of the unique issues associated with Grayscale and it  
21 being a trust versus an ETF. I think what we're trying to  
22 accomplish here versus a liquidating trust which will have  
23 to hold and monetize these assets is to create a structure  
24 where the instrument that reflects the customer's ownership  
25 trades as well as it can and we think a public company

1 filing Q's and K's with customer representatives controlling  
2 the board will be better than a liquidating trust which I  
3 have a ton of experience with as do many others on this call  
4 where the claims of that liquidating trust tend to trade at  
5 a meaningful discount to underlying value if they trade at  
6 all.

7 Q All right --

8 THE COURT: Anything else, Mr. Herrmann?

9 MR. HERRMANN: No, Your Honor, unless you want --  
10 unless you disagree with Mr. Puntus and want him to give us  
11 a rough deal, of a rough outline of any deals, in other  
12 words, ask him to answer those questions. I don't have  
13 anything further.

14 THE COURT: I'm not going to -- I, you know, at  
15 this stage, Mr. Herrmann, we'll all look forward to the  
16 disclosure statement and the plan. I think it's a fair  
17 point that you and others have raised as to whether the  
18 expense reimbursement and breakup fees should be approved  
19 without some further information about projected recoveries  
20 and things like that because it's a separate issue. So  
21 that's a point that's been made. Anything else, Mr.  
22 Herrmann?

23 MR. HERRMANN: No, that's all. Thank you.

24 THE COURT: Thanks very much. Mr. Mendelson.

25 MR. MENDELSON: Yes. Thank you, Your Honor.

1 CROSS EXAMINATION OF MARC PUNTUS

2 BY MR. MENDELSON:

3 Q Thank you, Mr. Puntus, for answering the questions.

4 You obviously are extremely knowledgeable and I have a few  
5 questions and concerns regarding the breakup fee. Have you  
6 done any analysis or know how much NovaWulf was making on,  
7 let's say, a monthly basis prior to this Celsius engagement?

8 A No.

9 Q Well, the reason that I ask is I'm trying to, I'm  
10 trying to do my own mathematical analysis. If we were to  
11 take a look at how many hours they spent on making the plan  
12 and multiply that by an hourly -- you know, hourly wage or  
13 salary, how is that in comparison to the amount of, I guess  
14 money that's being asked for creditors to pay for this  
15 breakup fee. I believe that they're -- sorry.

16 A Yes. No, I guess I would take the position, Mr.  
17 Mendelson, that the breakup fee only -- it's a breakup fee  
18 because we do believe they are serving as a stalking horse  
19 and it only -- and if they don't, and if they don't get  
20 topped, it only gets paid in the circumstances where we get  
21 a higher or better bid.

22 And in my view, if we do that's great for customers and  
23 that higher or better bid will effectively cover their  
24 breakup fee, so that's the way we look at breakup fees, not  
25 in relation to, you know, what they were making before, how

1 many hours specifically they spent.

2       There was as part of these negotiations, a per diem  
3 concept that was introduced by NovaWulf at some point where  
4 they, you know, to your point, where they had asked for sort  
5 of a fee related to sort of how much they think they should  
6 be paid per diem, given that they're highly compensated  
7 professionals. We ultimately rejected that that concept as  
8 part of these negotiations.

9 Q     So just to summarize or to clarify, that \$5 million  
10 that creditors would be paying as part of the breakup fee if  
11 a higher bid comes in, would exponentially lead to a greater  
12 return back to the estate to pay creditors because of that  
13 \$5 million stalking horse proposal?

14 A     I think that's correct, right. This is not your  
15 typical case where someone buys a business for \$100 million  
16 and then the next bid has to cover the breakup fee and the  
17 expenses. Bids will be different. There will be different  
18 components, but yes, the debtors and the Creditors Committee  
19 will have to determine that that higher or better bid is  
20 higher or better enough to cover the breakup fee and the  
21 expenses here in order to proceed. That will be one  
22 component of, you know, of a complicated comprehensive  
23 analysis.

24 Q     Yeah, I understand. It makes sense. You know, I guess  
25 my only one or two additional concerns would be that I

1 believe that NovaWulf's plan is based around Simon Dixon's  
2 plan and maybe pulled from other pieces of other plans and I  
3 don't believe that these other individuals are getting a  
4 "breakup fee" and I believe that they provided the  
5 foundation for this plan.

6 THE COURT: We're not going to argue, Mr. Crews --  
7 Mr. Mendelson. I'm sorry, I --

8 MR. MENDELSON: No worries, no worries.

9 THE COURT: We're not going to talk about what  
10 other plans do. I'm happy to ask -- have you ask whatever  
11 questions of the witness you want, but not in comparing with  
12 -- you know, we're dealing with the breakup fee and expense  
13 reimbursement today.

14 MR. MENDELSON: Understand. I appreciate that.  
15 I'm not -- I'm obviously not a lawyer. I'm just a pro se  
16 U.S. citizen.

17 THE COURT: You've asked good questions before and  
18 I'm happy to have you ask questions now.

19 MR. MENDELSON: No worries. Thank you.

20 BY MR. MENDELSON:

21 Q I guess my only other question is what -- I don't want  
22 to say precedent, but what are we putting out there in the  
23 public if companies can just come in, into the bankruptcy  
24 cases, make bids, and if they're selected by future UCCs or  
25 this UCC that they get compensated for their bid, even if

1     their bid doesn't get approved? I am in a relationship. I  
2     have a girlfriend. If we break up tomorrow, fortunately,  
3     she doesn't get my money. If we get married, she takes it  
4     all. We're not married to NovaWulf, I don't think, and so  
5     I'm just concerned about what this, what kind of precedence  
6     this may set in future bankruptcy cases.

7     A     I'm happy if Your Honor wants me to, to take --

8             THE COURT: No, I think -- I don't want you to  
9     answer that. Okay, thanks very much, Mr. Mendelson. Mr.  
10    Crews.

11            MR. CREWS: Yes, thank you, Your Honor. Cam  
12    Crews, pro se creditor.

13                    CROSS EXAMINATION OF MARC PUNTUS

14    BY MR. CREWS:

15    Q     For the sake of clarity, Mr. Puntus, is NovaWulf being  
16    compensated in terms of their hourly employees investing  
17    time towards this process?

18    A     No. The hourly compensation will be for their counsel.

19    Q     And do you have an estimate of how much has been  
20    expended so far?

21    A     I don't.

22    Q     Would you be able to put a probability in terms of the  
23    likelihood of all \$13 million being expended?

24    A     I would say the probability is high that we get close  
25    to the cap. This is a very complex, complicated transaction



1 and significant time and fees including lawyer fees have  
2 been expended already.

3 Q And could you also clarify in terms of the  
4 determination of higher and better, both who would determine  
5 that and any metrics that would be used to evaluate that?

6 A I think the standard of bankruptcy is higher or better.  
7 The or I think is important here. I think as we've done  
8 throughout the case, the Debtors, their principals, their  
9 professionals, the Committee, their principals, and their  
10 professionals would sit down and carefully analyze other  
11 transactions available and determine whether they're higher  
12 or better.

13 As I said, in this case, versus some others, higher or  
14 better is not as quantifiable. I think there are components  
15 that are quantifiable. Some of it is qualitative. Some of  
16 it is quantifiable. We'll sort of know it when we see it,  
17 and ultimately, Your Honor will be the ultimate arbiter of  
18 that.

19 Q And do both, then the Debtors and the UCC have to come  
20 to an agreement or what happens if there is some  
21 disagreement over those terms?

22 A I think in this unique case where the Committee  
23 represents the customers who clearly have been harmed here,  
24 we have tried our level best to work -- and Kirkland may  
25 yell at me about this -- as co-advisors with the Committee.

1 We think it is critically important to do so. So my -- I  
2 have a strong -- I strongly believe that ultimately, the  
3 Committee and the Debtors would come to the same conclusion  
4 here as to what's higher or better.

5 Q Great. And just as a final question, in terms of just  
6 as an example, if somebody were to come in with a slightly  
7 higher bid of say \$46 million over the 45 that's been  
8 proposed to add, that would technically be higher and better  
9 but not exceed the \$5 million breakup fee. So, would they  
10 need to essentially exceed it by more than \$5 million in  
11 that case?

12 A In a normal -- in a usual circumstance, they would need  
13 to exceed it by the breakup fee and the expense  
14 reimbursement. The first bid, if we were talking about  
15 apples to apples would be the bid plus expense reimbursement  
16 plus breakup fee plus some reasonable increment. So no,  
17 that bid, to your point, wouldn't be higher or better  
18 because we would need to then pay \$5 million plus \$13  
19 million.

20 Q Ok. So \$23 million would be the expected watermark,  
21 effectively, to exceed?

22 A Again, if we're just talking about dollars, I think  
23 there are other ways competing bidders can create a higher  
24 or better bid that don't relate only to direct dollars. But  
25 yes, if we're just speaking to dollars, you're correct.

1 Q Thank you. No more questions.

2 A (indiscernible).

3 THE COURT: Thank you very much, Mr. Crews. Mr.  
4 Reph.

5 MR. REPH: Thank you, Judge Glenn. Ryan Reph, pro  
6 se creditor.

7 CROSS EXAMINATION OF MARC PUNTUS

8 BY MR. REPH:

9 Q I agree with the breakup fee, but with that said,  
10 considering NovaWulf will receive approximately \$30 to \$35  
11 million for the first year in their management fee, is that  
12 what you said, Mr. Puntus, they're -- you're kind of  
13 guessing?

14 A Again, it depends upon --

15 Q A guesstimate.

16 A It depends on the NAVs at disclosure statement and then  
17 we'll have to update those as of the filing date, but we're  
18 trying to give Your Honor a sense of what those fees might  
19 be in year one. So, yes, that was a -- purely a guesstimate  
20 and I hope not to be completely held to it as valuations  
21 move around over the next few months.

22 Q And that's going to be a question for the plan, is the  
23 date that we're going to be using for liquidation analysis  
24 and et cetera. And so considering you guys will get that in  
25 your investments, \$45 million, to me it's kind of a minimal

1 bet. And in my opinion, would think that there would be a 1  
2 percent breakup fee or -- mas o menos.

3 I understand the complexity that you speak about, we're  
4 in this, but the estates are already paying for the other  
5 professionals involved creating the plan and working with  
6 NovaWulf and paying our fair share of expenses already.

7 And considering they've been on the case for a few  
8 months and only part of -- and only a part of this case, a  
9 large part nonetheless, I believe the \$5 million breakup fee  
10 would be sufficient.

11 So my question regarding the additional expenses, are  
12 the additional expenses considered to be from when plan  
13 confirmation happens on? So then, you know, the creditor  
14 body will just -- or the Debtor will just take on those  
15 expenses or are these all the expenses since day one that  
16 NovaWulf has kind of put in?

17 A The latter.

18 Q The latter. And do you have an approximate already,  
19 like a tally? Are they giving any monthly statements to you  
20 guys or are they just keeping everything?

21 A Yeah, I don't. They've been paying those expenses  
22 themselves, so I don't have an estimate other than to say,  
23 you know, thousands of hours have been spent, tens of  
24 thousands of hours between the Debtors, NovaWulf, and the  
25 Committee.

1 Q Yeah, no, 100 percent. And that's what I'm saying.  
2 And the creditor body is basically paying for the majority  
3 of that already, just not the NovaWulf expenses. That's  
4 where I'm thinking the \$5 million breakup fee should satisfy  
5 all salaries and expenses, but that's all I have today.  
6 Thank you.

7 MR. REPH: Thank you, Judge.

8 THE COURT: Mr. Puntus, am I correct that the  
9 breakup fee and the expense reimbursement is only paid if  
10 someone tops the bid and is selected instead of NovaWulf?

11 THE WITNESS: If the Debtors or the Committee  
12 exercise their fiduciary out to accept a higher or better  
13 bid. Yes.

14 THE COURT: Yes, but NovaWulf does not receive  
15 either the breakup fee or the expense reimbursement if the  
16 plan's confirmed and they go forward as the sponsor?

17 THE WITNESS: They don't receive the breakup fee.  
18 I believe that the expense reimbursement will be addressed  
19 as part of their management fee structure going forward, if  
20 they prevail in NewCo.

21 THE COURT: Okay. All right. Mr. Christiansen.  
22 Thank you very much, Mr. Reph. Mr. Christiansen.

23 MR. CHRISTIANSEN: Thank you, Your Honor. I have  
24 two questions.

25 CROSS EXAMINATION OF MARC PUNTUS

1 BY MR. CHRISTIANSEN:

2 Q In the event of a rally in crypto prices between now  
3 and the confirmation of the plan such that the proposed plan  
4 is less than the liquidation analysis, would the breakup fee  
5 still be paid?

6 A The breakup fee is only paid to the extent we move  
7 forward with a higher or better bidder. To the extent we  
8 pivot to an orderly winddown, the breakup fee will not be  
9 paid.

10 Q And what about reimbursement of expenses? Similar  
11 answer? No.

12 A No. the answer is no.

13 Q Great. This -- my second question, I think, is just a  
14 point of clarification for your benefit, Mr. Puntus. You  
15 made multiple references including in a response to a  
16 question from Judge Glenn about how the board will be  
17 constituted. With the plan that was submitted, the proposal  
18 had seven board members, two are UCC appointed, three are  
19 UCC nominated but subject to a NovaWulf approval, and two  
20 are NovaWulf appointed and you made a statement that it  
21 would be customer appointed. Has the makeup of the board  
22 changed following the last presentation to the Court.

23 A I believe I said customer controlled, and I still  
24 believe it will be customer controlled under the math you  
25 just laid out.

1 Q Okay. Thank you for those. That's the extent of my  
2 questions.

3 THE COURT: Thank you very much. Anybody else  
4 have any questions?

5 All right, I do have some questions for counsel  
6 and, I guess, I've asked these of Mr. Puntus, but they're  
7 really legal questions and just bear with me a second here.  
8 So Mr. McCarrick or -- I'm not sure which one of your  
9 colleagues is going to answer these questions, but I'm just  
10 trying to understand. Well, first let's assume the plan is  
11 confirmed. The assets transfer to NovaWulf to NewCo and  
12 what happens in the event of a subsequent breach? What  
13 happens to the assets? Does the case -- the case can be  
14 converted to a Chapter 7 case? I mean, now you have a new  
15 entity holding. Is there a provision -- is it contemplated  
16 as a provision about unwinding the transfer to NewCo?

17 MR. KOENIG: Your Honor for the record, Chris  
18 Koenig, Kirkland and Ellis for the Debtors. So your  
19 question is, after the plan, after the Chapter 11 plan is  
20 consummated and --

21 THE COURT: Yeah. You know, I've had cases where  
22 there's a breach of the plan, where there's a failure to  
23 perform. What happens then? What happens to the assets  
24 that have gone into NewCo?

25 MR. KOENIG: So if the terms of the plan are

1 breached or are not actually complied with Your Honor?

2 THE COURT: Correct. There's already been a  
3 transfer of the assets into NewCo and I want to know whether  
4 -- do the assets come back? Does the -- what happens to it?  
5 If the case is converted to a Chapter 7 at that point, what  
6 are the assets of the estate?

7 MR. KOENIG: Your Honor, at that point, I think  
8 that the plan would have been substantially consummated.  
9 The old bankruptcy would be over and there would be a NewCo  
10 that would -- you know, if it was in financial distress for  
11 some reason or another, you know, would have to -- you  
12 know, we don't anticipate this, of course, but I think it  
13 would be a -- the distress of NewCo, it wouldn't have  
14 anything to do with the old Chapter 11 estates.

15 At that point, all of the assets would have been  
16 sold, would have been transferred to NewCo to be managed by  
17 NovaWulf and it wouldn't sort of revert back to the extent  
18 that there's a breach. Of course, if there's, you know, a  
19 violation of the terms of the plan, Your Honor will, you  
20 know, retain jurisdiction to, you know, adjudicate that.  
21 But at that point, I believe the transaction would have been  
22 substantially consummated.

23 THE COURT: All right. What happens if the case  
24 is converted to Chapter 7 before a plan is confirmed? Is  
25 NovaWulf entitled to expense reimbursement? Not a breakup



1 fee, there isn't a higher bidder, but will NovaWulf be  
2 entitled to receive expense reimbursement if the case is  
3 converted to a Chapter 7?

4 MR. KOENIG: Your Honor, the -- you're correct.  
5 There would be no breakup fee because it would be within the  
6 definition of an orderly winddown. But the expense  
7 reimbursement --

8 THE COURT: Well -- I'm sorry, but the definition  
9 of an orderly winddown, I didn't see where it included  
10 converting the case to Chapter 7. I may --

11 MR. KOENIG: Your Honor --

12 THE COURT: -- have missed it.

13 MR. KOENIG: Yeah, Your Honor, I'm looking at Page  
14 48 of 150 in the definition of orderly winddown, 48 of 150  
15 on Docket No. 2151 which is the bid protections motion  
16 itself which attached the plan sponsor agreement. So I'm on  
17 page 48 of 150. The definition of orderly winddown says  
18 "The orderly winddown of the Debtors' estates to be  
19 effectuated, X, by a conversion of the Chapter 11 cases to  
20 cases under Chapter 7 of the Bankruptcy Code or Y, by the  
21 plan administrator pursuant to the winddown procedures."

22 THE COURT: All right. What if the regulators  
23 determine that NovaWulf is not regulatory compliant? Are  
24 they entitled -- and therefore the plan does not get  
25 confirmed. Is NovaWulf entitled to expense reimbursement in

1 that circumstance?

2 MR. KOENIG: Your Honor, they would be entitled to  
3 an expense reimbursement under the plan sponsor agreement.  
4 Yes.

5 THE COURT: Okay. Even if the failure to be  
6 regulatory compliant was entirely because of their conduct  
7 or lack of conduct, the agreement would provide they're  
8 entitled to the expense reimbursement?

9 MR. KOENIG: Your Honor, it depends on whether  
10 it's a breach of the plan sponsor agreement. So if they  
11 have a covenant or something that they're supposed to do and  
12 they don't perform, it's a breach. The plan sponsor  
13 agreement is terminated because of their breach. The  
14 expense reimbursement is not due in that circumstance. So  
15 they have covenants to work in good faith to try to become  
16 regulatorily compliant. I'm -- this is a pure hypothetical,  
17 of course. We don't expect this. If they were to not take  
18 any actions, they don't answer any questions of regulators,  
19 they don't provide any necessary --

20 THE COURT: Let's say they do all that. Let's say  
21 they do all that.

22 MR. KOENIG: Right.

23 THE COURT: Regulators convince the Court that  
24 they -- that the plan can't be confirmed because NovaWulf is  
25 not regulatory compliant.

1 MR. KOENIG: Right.

2 THE COURT: Are they entitled to expense  
3 reimbursement in that circumstance?

4 MR. KOENIG: They would be entitled to expense  
5 reimbursement as long as it was not the result of their  
6 breach of their obligations under the plan sponsor agreement  
7 and the Debtors believe that that is appropriate given the  
8 shifting regulatory landscape that we have and you know, all  
9 of the hard work that it's going to take to get -- there's  
10 no certainty in this case.

11 THE COURT: Okay, so I saw -- you know, I'm sure  
12 you saw as well. I read this morning that Coinbase received  
13 a Wells notice from the SEC and why should NovaWulf have the  
14 -- if it's because they can't, are not deemed, are not  
15 determined to be plan compliant, why should the estate have  
16 to pay their expense reimbursement in that circumstance?  
17 I'm really --

18 MR. KOENIG: Your Honor --

19 THE COURT: I'm really balking at this.

20 MR. KOENIG: Understood, Your Honor, and we  
21 negotiated this heavily and this was one of the most  
22 important points to us, but what the Debtors came to in our  
23 business judgment was that they are working very hard along  
24 with us to make this regulatorily compliant. But there's no  
25 guarantee because this is a shifting landscape. If

1 everybody, you know, tries their best and works their best  
2 and at the end of the day, the regulators, you know, say  
3 that this doesn't work, it doesn't mean that they shouldn't  
4 be entitled for expense reimbursement for their good faith  
5 efforts in trying to reach that result. And we're working  
6 with the regulators. We have weekly calls with them. We've  
7 been providing --

8 THE COURT: That was going to be my -- stop. My  
9 next questions were for you to explain what has been done so  
10 far to be able to get any comfort that the regulators will  
11 approve the structure that's proposed.

12 MR. KOENIG: Yes, Your Honor. So we have been in  
13 constant communication with the regulators for the last  
14 several weeks. We have a weekly call with the state  
15 regulators. We have separate calls with federal regulators.  
16 It is one of the most important issues to our board, Your  
17 Honor.

18 It's a critical component to the Debtors and to  
19 the Committee and in our business judgment, we believe that  
20 this makes sense at this time and we believe that the there  
21 is a, you know, a reasonable chance that this is going to  
22 work. Of course, there's no guarantees in this  
23 circumstance, but we're standing here today with the bid  
24 that is the result of a six-month sale process and we  
25 believe that it is appropriate to continue down this path in

1 light of the fact and circumstances --

2 THE COURT: Well, except Mr. Koenig, that it was  
3 only within the last few weeks that I began hearing that  
4 there actually were direct communications between the  
5 Debtors' professionals and the regulators. For a long time,  
6 I kept hearing that there was no communication with the  
7 regulators and this is an extremely complex transaction.

8 Certainly I've read the transcript or the opinion  
9 that Judge Wiles issued, two opinions, in Voyager and I know  
10 that the government has appealed his confirmation of the  
11 plan and I'm concerned about a structure that would -- could  
12 result in \$13 million in expense reimbursement being paid to  
13 NovaWulf when the reason this has failed is that the  
14 regulators, you know, the -- some action is taken to prevent  
15 -- or I don't approve it.

16 There are objections from the regulators and I  
17 conclude they're right and I don't approve the deal. I'm  
18 very concerned in that circumstance that you've put the  
19 entire risk on the estate and none of it on NovaWulf as to  
20 \$13 million.

21 MR. KOENIG: Your Honor, a couple of points. So  
22 first on the regulatory point, we wanted to make sure that  
23 we had a transaction structure in hand before we engaged  
24 with the regulators because if we went forward with  
25 something that was, you know, not fully baked or, you know,

1 we weren't going to be able to answer their questions, that  
2 wouldn't be productive or that wouldn't be helpful. We've  
3 had very detailed calls with them where they have a lot of  
4 diligence questions and a lot of questions in general about  
5 the transaction structure, and put simply, we wouldn't have  
6 been able to answer those questions, you know, a couple of  
7 months ago.

8 You know, we waited until we had the certainty  
9 that we had about the transaction structure so that we could  
10 have a constructive meaningful dialogue with them and that's  
11 why the dialogue has increased over the past few weeks now  
12 that we have additional certainty about, you know, what the,  
13 both the Debtors and the Committee believe to be the proper  
14 path forward.

15 THE COURT: That's fine, but it still raises the  
16 question in my mind of you're putting \$13 million of the  
17 Debtors' assets on the line for expense reimbursement. If  
18 this all falls apart because of regulatory action and, you  
19 know, why does the Debtor bear that risk and not NovaWulf?  
20 That's my question.

21 MR. KOENIG: Your Honor, NovaWulf is spending an  
22 awful lot of time and effort and yes, cost, that isn't even  
23 in the expense reimbursement because as Mr. Puntus  
24 testified, they've spent thousands of hours on this  
25 transaction. They sought a per diem. We were able to

1 negotiate the per diem out of the expense reimbursement. So  
2 there's certainly cost and time effort and opportunity cost  
3 for NovaWulf and their management team that could be  
4 pursuing other opportunities.

5 So I don't believe that it's fair to say that that  
6 NovaWulf has no risk. They've been putting an awful lot of  
7 time and effort and expense and manpower, you know, sweat  
8 equity into this transaction that would certainly be lost in  
9 the event that the deal is ultimately not approved by Your  
10 Honor or by regulators or otherwise.

11 But we believe at the current time that our  
12 business judgment is that this deal is reasonably likely to  
13 succeed and there are certainly hurdles that we have to get  
14 over between now and confirmation, but we've been laser  
15 focused on making sure that we're regulatorily compliant.  
16 We would not be standing here today if we did not believe  
17 that there was a reasonable path forward on that, in that  
18 regard.

19 THE COURT: All right, let me hear from Mr. Pesce.

20 MR. PESCE: Thank you, Your Honor. Gregory Pesce,  
21 White and Case, on behalf of the Committee. Can you hear me  
22 all right?

23 THE COURT: I do.

24 MR. PESCE: On the regulatory point, I just wanted  
25 to make a couple of comments to help flesh out the record

1 here. So first off, in terms of engagement with the  
2 regulators, I appreciate that there's been some commentary  
3 that, you know, they haven't been engaged with, but the  
4 Committee has been speaking with the regulators, including  
5 about this type of NewCo structure for some time.

6 Specifically, the state regulators who have told  
7 us they've been sort of taking the lead on it and we have  
8 since that time in conjunction with Kirkland and Ellis been  
9 helping them, you know, plan their communications with the  
10 SEC in response to questions that the federal regulators  
11 have now been sharing with the Debtors regarding the  
12 structure.

13 We're very sensitive as to the allocation of risk  
14 here on the regulatory approval point. Having worked on  
15 this for several months now, the Committee's view is that  
16 the transaction should meet regulatory muster and there's a  
17 lot of reasons we think that. NovaWulf is a registered  
18 investment advisor figure. The banking counterparty is a  
19 registered broker dealer and transfer agent and the party  
20 that we believe is going to be the custodian whose name I  
21 don't think is yet public, but in any event is a registered  
22 national bank custodian.

23 THE COURT: That's actually the first time I've  
24 heard -- maybe, I didn't see anything in any of the papers  
25 that NovaWulf was a registered investment advisor and that



1 the other parties are also registered as well. I actually  
2 had in my list of questions for counsel -- I wasn't going to  
3 ask Mr. Puntus that -- is whether NovaWulf has to register  
4 as an investment advisor or -- so that, is there something  
5 in the papers that I've read that shows that to be the case?

6 MR. PESCE: I'll have to check the record, but we  
7 can work with the Debtors to put forward some kind of  
8 supplemental filing -- .

9 THE COURT: Okay.

10 MR. PESCE: -- in that regard, but I think the  
11 point that I'm -- the key point I want to make here is that  
12 there are a number of very sophisticated parties that are  
13 not new to this space that are going to be parties to this  
14 transaction. You know, you've heard from a number of people  
15 that could have, would have, might have been trying to  
16 submit plans.

17 Candidly, it was the lack of regulatory muster  
18 that we, that they already had that was a significant reason  
19 that we decided to do a structure that many creditors might  
20 view as similar to other things that have been floated on  
21 the internet because the parties that NovaWulf itself and  
22 the parties it's teamed up with, as well as their management  
23 team that have extensive experience working for, you know,  
24 large, you know, financial institutions with hundreds of  
25 billions of dollars under capital -- under management, why

1 we chose them versus others that had similar ideas about  
2 tokenizing recoveries.

3 All that being said, and I -- you know, you  
4 mentioned the Voyager decision. You know, at the end of the  
5 day though, whether NovaWulf is regulatory compliant is not  
6 a matter for NovaWulf. The question, that question will  
7 fall to the regulators to make that determination based on  
8 all of the information that we have today including past  
9 statements by the government agencies regarding the  
10 treatment of Bitcoin and Ethereum not being securities, all  
11 of the other information that's out there.

12 We think that they will meet that test if it's  
13 applied in a rigorous, honest, fair way, but we don't know  
14 and NovaWulf cannot control that decision if the government  
15 decides to make policy or re-alter policy that is out there  
16 in the past. So that said, we think it's an appropriate  
17 allocation of risk because whether or not NovaWulf  
18 ultimately meets that standard and we do think that they  
19 will meet that standard, they are still going to be serving  
20 as a stalking horse.

21 They're still going to be basically coordinating  
22 and funding acquisitions and investments in the business  
23 that would be necessary for any bidder that the company  
24 deals with here to make distributions under the plan given  
25 the prior issues with the company prepetition and we think

1 that it's an appropriate allocation of risk in light of that  
2 and the total value, the reorganization value that this  
3 transaction would provide and the floor it would provide  
4 through the auction process that might reveal another party  
5 to come forward.

6 And as was mentioned earlier in the presentation,  
7 the Committee in particular is very focused on one  
8 particular consortium that also has a number of repeat  
9 players in the crypto space, all of which familiar -- have  
10 familiarity with the regulatory issues here as a potential  
11 alternative bid. And we think that it's important to get  
12 NovaWulf approved so that we lock in the bird in the hand so  
13 we have something to show for ourselves at that auction and  
14 can continue to work with this other party.

15 THE COURT: Mr. Pesce, I -- maybe my concern may  
16 be misplaced, but I was, that was the reason for my question  
17 earlier of whether NovaWulf would be entitled to expense  
18 reimbursement in the event of a conversion to Chapter 7 and  
19 let's assume an orderly liquidation through Chapter 7.

20 And the answers that I received was yes, they'd be  
21 entitled to expense reimbursement in that circumstance.  
22 Okay? I'm not talking about them being topped by another  
23 sponsor bid. I'm focusing with these questions on what  
24 happens in the -- hopefully circumstance that doesn't occur,  
25 that the case would be converted to Chapter 7. I assume a

1 Chapter 7 Trustee would retain an asset manager to assist in  
2 the orderly liquidation.

3 But the questions I asked was, and I got answers,  
4 that they would be entitled to expense reimbursement in that  
5 context. If the bid is topped and somebody new comes in --

6 MR. PESCE: Sure.

7 THE COURT: In my mind, that's kind of a different  
8 circumstance. And I was really focused on why the estate  
9 should bear the entire risk of up to \$13 million if the deal  
10 fails because of failure to achieve regulatory compliance,  
11 et cetera.

12 MR. PESCE: I think on the Chapter 7 point, you  
13 know, we also -- look, this was a tough call. There were  
14 many late nights with all of us trying to get this right. I  
15 think on balance, the Committee believes that even -- that  
16 paying the expense reimbursements, even in the Chapter 7  
17 scenario is appropriate because we will be making that  
18 decision, you know, not through happenstance, but -- well,  
19 first off, we think -- we do not think that it's appropriate  
20 to convert the case and I struggle to find a scenario where  
21 that might happen.

22 But if it were to -- if the Committee and the  
23 Debtor were to decide that it's appropriate to convert to  
24 Chapter 7, as unlikely as that might be, it would be because  
25 --

1 THE COURT: It's not up to the Committee and the  
2 Debtor to decide that. It's up to me.

3 MR. PESCE: You would order it, but I mean for us  
4 to support that type of relief, if it's, you know, planned.

5 THE COURT: I assumed you'd oppose that, okay, but  
6 it's my call.

7 MR. PESCE: Yeah. Right, exactly. It's your call  
8 and I apologize for any, you know, misstatement in that  
9 regard. Obviously, it's your call. But we would only be  
10 taking a position to support that type of relief because  
11 we've had NovaWulf, the bird in the hand. We've run the  
12 process and we've determined that not only is there not  
13 another liquidating bidder that could be effectuated in  
14 Chapter 11, but that, you know, a liquidation Chapter 7  
15 would provide more value.

16 And even in that scenario, the value that NovaWulf  
17 would have provided and the stability it would have provided  
18 as we work the rest of the auction process would still have  
19 been obtained and received by the estate. And therefore,  
20 you know, in light of that value, we still think it's  
21 appropriate to give them the expense reimbursement in the  
22 unusual circumstances of this case.

23 THE COURT: All right. Anything else you want to  
24 add?

25 MR. PESCE: Just to kind of close out, just very

1 briefly. Look, we -- the Committee first met with NovaWulf  
2 last fall and the NovaWulf team presented to the Committee a  
3 very unique structure which we then, talked to the Debtor  
4 about and have been working with them for, you know, the  
5 better part of probably six months at this point to reach to  
6 fruition.

7 It's been said that, you know, the -- they've  
8 committed a lot of time to this endeavor already. The  
9 purpose of the bid protection is not to compensate them for  
10 what they've done to date. It's to make sure that they're  
11 still going to be -- the bird in the hand is going to be in  
12 the hand, so to speak, tomorrow and the day after or next  
13 month.

14 The Committee has significant concerns that given  
15 the amount they've spent, that either NovaWulf will not be  
16 there or that the deal that NovaWulf would support would be  
17 materially less valuable for creditors than the one that's  
18 on the table today. And for that reason, we think it's  
19 really important to approve the bid protections and so I  
20 want to make that clear.

21 Also in terms -- I just want to make one kind of  
22 clarifying statement and it might be easiest just to sort of  
23 put something on the docket after this, which we'd be happy  
24 to do. We also want to make it clear that NovaWulf is not  
25 just going to get its fee under the transaction for sitting

1 on a pile of tokens and assets and getting -- you know, that  
2 they're not incentivized. There is an incentive fee  
3 structure. It's called the MST and it receives a, you know,  
4 a 10 percent incentive fee based on the base amount of the  
5 assets.

6 So there was some commentary earlier about how  
7 NovaWulf doesn't really have to hit any incentive measures.  
8 We respectfully disagree. We can work with the Debtor if  
9 helpful to kind of highlight that in a filing or other kind  
10 of statement to the Court if that's relevant to your  
11 decision today.

12 And with all that, we would hope that the Court  
13 blesses this so we can continue down our auction process and  
14 hopefully use NovaWulf's competitive tension to find this  
15 other bidder if they're real or not or at a minimum lock in  
16 the baseline bid for our plan. Thank you, Your Honor.

17 THE COURT: All right. Thank you, Mr. Pesce. Mr.  
18 Lehr, if I pronounce your name correctly.

19 MR. LEHR: Yes, Your Honor. Joe Lehrfeld, pro se  
20 creditor. I had a few questions for Mr. Koenig if that's  
21 okay?

22 THE COURT: Ask me and I'll see whether it's okay  
23 or not.

24 MR. LEHR: Sure. So the first question, was  
25 finalizing the nuanced negotiations with borrowers a key

1 part of overcoming objections to the bid protection?

2 THE COURT: Mr. Koenig, can you answer that?

3 MR. KOENIG: Your Honor, Chris Koenig. I  
4 understood the question to be was coming to a deal with the  
5 borrowers a key component of moving forward with the hearing  
6 today; was that the question?

7 MR. LEHR: Yes.

8 THE COURT: That's the question. Go ahead.

9 MR. KOENIG: It was certainly -- I mean, the  
10 borrow -- the deal with the borrowers is certainly key.  
11 They're a large constituent in the case, as we've talked  
12 about at prior hearings, and you know, we're happy to have  
13 reached a resolution with them.

14 You know, we're obviously not in a situation, you  
15 know, to play 20/20 hindsight whether we would have gone  
16 forward or not without that deal, but we're very pleased to  
17 be able to be building additional consensus for the  
18 transaction and for the plan. Certainly, it was one  
19 component of the Debtors' belief that the bid protections  
20 are reasonable at this stage, given the additional support  
21 we've now received from one of our critical stakeholders.

22 THE COURT: All right --

23 MR. LEHR: (indiscernible). Is --

24 THE COURT: Go ahead, Mr. Lehr.

25 MR. LEHR: Sorry.



1 THE COURT: No, go ahead. You have another  
2 question?

3 MR. LEHR: Yes. Who's the largest class of  
4 creditors in this case?

5 MR. KOENIG: The Earn creditors are largest by  
6 dollar amount as of the petition date.

7 MR. LEHR: Okay, and is coming to terms,  
8 negotiated terms with Earn creditors equally as important?  
9 I understand at this point that Earn creditors really don't  
10 even have a clue how much they might be getting back in  
11 terms of crypto.

12 THE COURT: That's really a disclosure statement  
13 and plan issue. So that is not really for today. Mr. Abreu  
14 and Mr. Leblanc, I'm not going to recognize either of you  
15 because you've both spoken already. Mr. Adler?

16 MR. ADLER: Good afternoon, Your Honor. David  
17 Adler from McCarter and English on behalf of the ad hoc  
18 group of borrowers. I did want to note for the record that  
19 we have had extended discussions over the last week with the  
20 Committee and the Debtor and we have reached an agreement in  
21 principle which we're hopeful to work out the remaining  
22 issues in the next few days.

23 And we also went through the same sort of issue  
24 that Mr. Pesce referred to as sort of considering a bird in  
25 the hand versus one in the bush. Could the deal be

1 improved? Yes, absolutely, Your Honor. We're hopeful that  
2 there will be a competitive process, but given where we are  
3 today, we think it's important that a baseline be locked in.  
4 So that was the reason for the fact that we reached a  
5 resolution on these issues and we're hopeful to see that as  
6 the process goes forward, that there will be more  
7 competition.

8 Obviously, the proposal that's been provided to  
9 us, gives an election to the borrowers to either liquidate  
10 on the effective date or to extend their loan terms for a  
11 period of time up to six years to get their collateral back  
12 in full. From the perspective of the borrowers, that is a  
13 very valuable opportunity to us and especially for many of  
14 the larger borrowers in this case. So I just wanted to give  
15 Your Honor that context. And you know, hopefully in the  
16 coming days, we will finalize the revised term sheet and  
17 that will be filed on the docket. Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Adler. As I said, I'm  
19 not going to recognize you Mr. Leblanc. You've already  
20 spoken today.

21 MR. LEBLANC: Your Honor, I'm sorry --

22 THE COURT: No, no, no, no. All right. This is  
23 the first hearing, to my knowledge, when the SEC has made an  
24 appearance on the record. Ms. Scheuer, are you still on the  
25 line?

1 MS. SCHEUER: I am Your Honor. Good morning.  
2 Therese Scheuer for the Securities and Exchange Commission.

3 THE COURT: Thank you very much. And so  
4 obviously, there's been a lot of discussion today whether  
5 NovaWulf is or can become regulatory compliant. Does the  
6 SEC have any views that it's willing to express today?

7 MS. SCHEUER: Your Honor, the SEC staff is  
8 reviewing the plan term sheet that was filed with the bid  
9 protections motion. Not in a position for today's purposes  
10 to take a position on the materials that have been filed so  
11 far. But we'll certainly raise any issues that we may have  
12 regarding the plan at the appropriate time. Thank you, Your  
13 Honor.

14 THE COURT: Well, do you have any issues that you  
15 want to raise with respect to the bid protections?

16 MS. SCHEUER: No. Thank you, Your Honor.

17 THE COURT: And if I gave you a week to be able to  
18 put in a paper, just address to the issue of the bid  
19 protections? I mean, you've heard my concern, what happens  
20 if NovaWulf is not regulatory compliant and it doesn't go  
21 forward because of that. I'm told that they would be  
22 entitled to up to \$13 million in expense reimbursement.  
23 It's an issue for me. Would you or your colleagues be  
24 prepared to indicate any response on respect to that issue  
25 within the next week?

1 MS. SCHEUER: With regards to whether we would  
2 have a concern about the --

3 THE COURT: Yes.

4 MS. SCHEUER: -- expense reimbursement being paid?  
5 If Your Honor would like, I can take that back to --

6 THE COURT: All right.

7 MS. SCHEUER: (indiscernible).

8 THE COURT: And please do that and -- by next  
9 Tuesday at noon, could you please file something one way or  
10 the other as to whether the staff or the commission has any  
11 position that it will take? I'll give you until Tuesday at  
12 noon. Okay?

13 MS. SCHEUER: Just with respect -- just to  
14 clarify, Your Honor, just with respect to the breakup  
15 reimbursement?

16 THE COURT: Correct, correct. There'll be plenty  
17 of time to deal with issues about confirmation and  
18 disclosure statement. Okay, thank you very much.

19 All right, so any of the state regulators wish to  
20 be heard? Because I've heard from various counsel that  
21 there's been greater engagement with the regulators in  
22 recent weeks, certainly. Ms. Milligan, I know you made an  
23 appearance earlier. Do you have anything you want to say at  
24 this point?

25 MS. MILLIGAN: Good morning or good afternoon,

1 Your Honor. Layla Milligan. Can you hear me okay?

2 THE COURT: Yes, I can.

3 MS. MILLIGAN: Thank you. With the Texas Attorney  
4 General's Office on behalf of the Texas State Securities  
5 Board and Texas Department of Banking. We did not file a  
6 formal objection to the bid protections. We are encouraged  
7 that there are still negotiations going on as far as the  
8 reduction of some of the numbers. I can confirm that there  
9 have been discussions related to the proposed plan to be  
10 filed and the associated entities that may be involved  
11 ultimately.

12 We are anxiously awaiting the disclosure statement  
13 and plan to be able to see exactly formally how all of this  
14 will ultimately shake out. But we are, I think it's safe to  
15 stay, encouraged at the discussions that have been taking  
16 place and I can only speak for Texas, certainly not the  
17 other state agencies, but we are certainly doing our own  
18 review of the entities that are being discussed to confirm  
19 that they are either regulatorily compliant or can become  
20 regulatorily compliant.

21 THE COURT: Is there a timeline as to which you  
22 can at least provide some guidance to the Court as to  
23 whether it appear -- without committing your agency to a  
24 final answer, I'm -- you've heard my concern. I just --

25 MS. MILLIGAN: Yes.

1 THE COURT: \$13 million is a lot of money and if  
2 it turns out that it's a nonstarter, well, that's, you know,  
3 money out from the estate.

4 MS. MILLIGAN: I can certainly visit with my  
5 client agencies if the Court would allow the same time  
6 period that was granted to the SEC for any sort of --

7 THE COURT: I would. If you could by Tuesday at  
8 noon, if you could indicate one way or the other, whether  
9 you have any, can provide any comfort on this issue. Okay?

10 MS. MILLIGAN: Absolutely, Your Honor. I would be  
11 happy to do that. And I would also offer to circulate that  
12 to the other state agencies. I haven't seen their  
13 appearance today, but I'm happy to circulate that and see if  
14 they have any thoughts as well.

15 THE COURT: I very much appreciate that.

16 MS. MILLIGAN: Sure, Your Honor. Thank you.

17 THE COURT: Is there anyone else who's made an  
18 appearance today on behalf of any of the state regulatory  
19 agencies?

20 MR. BERNSTEIN: Good afternoon, Your Honor,  
21 Jeffrey Bernstein, McElroy Deutsch Mulvaney and Carpenter --

22 THE COURT: For New Jersey?

23 MR. BERNSTEIN: For New Jersey and I wouldn't want  
24 to have to repeat what Ms. Milligan has said, but we will  
25 certainly address this post haste on the open issue. There

1 have been discussions and engagement with the UCC and the  
2 Debtors and we will work to address Your Honor -- response  
3 to Your Honor's concerns. Thank you.

4 THE COURT: Thank you again. I would say the same  
5 Tuesday at noon is the -- you know, even if the answer is  
6 you can't, I'd like to see something in writing that you  
7 can, you know, your client has considered it and they can or  
8 can't say whatever you're going to say, you know.

9 MR. BERNSTEIN: Thank you, Your Honor. Appreciate  
10 --

11 THE COURT: Okay. Thank you very much, Mr.  
12 Bernstein. Ms. Gallagher, you've already spoken today and  
13 consistent with what I've done with others, I won't  
14 recognize you again. Is there anybody who's not been heard  
15 who wants to be heard now? Mr. Ubierna de las Heras, go  
16 ahead.

17 MR. UBIERNA DE LAS HERAS: Good morning, Your  
18 Honor. Just to say that I (audio drops) 2236 and I (audio  
19 drops).

20 THE COURT: All right. Anybody else who wants to  
21 be heard who has not been heard already?

22 All right. The Court is going to take the matter  
23 under submission. I've set this deadline of Tuesday at noon  
24 for regulators to provide any further guidance or  
25 information or the fact that they're unable to do that. So

1 I'm going to take it under submission at least until then.

2 Hearing is adjourned. Thank you very much, everybody.

3 (Whereupon these proceedings were concluded at

4 12:44 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: Marth 26, 2023

[& - accelerated]

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